



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0437; FRL-8698-01-R6]

Air Plan Approval; Oklahoma; Volatile Organic Compound Emissions in Nonattainment Areas and Former Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma designee with a letter dated May 7, 2020. The submittal covers updates to the Oklahoma SIP, as contained in the state's 2019 annual SIP update. Specifically, this action addresses revisions to Oklahoma Administrative Code (OAC), Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas. There are two Oklahoma counties affected by this action: Tulsa County and Oklahoma County.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R6-OAR-2020-0437, at <https://www.regulations.gov> or via email to fuerst.sherry@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Sherry Fuerst, 214-665-6454, fuerst.sherry@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6454, fuerst.sherry@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On May 7, 2020, the Secretary of Energy and Environment for the State of Oklahoma submitted for EPA review and approval under section 110 of the CAA and 40 CFR part 51, revisions to the Oklahoma Air Quality SIP. The revisions were included in the state’s annual SIP update for 2019 and consisted of revisions to Subchapters 2 and 39 and Appendix Q in the OAC Title 252 Chapter 100, which became effective on September 15, 2019. In this action, we note that we are only proposing to approve revisions to OAC Title 252 Chapter 100 Subchapter

39 (OAC 252:100-39) Sections 4, 16, 40, and 41. We are not taking action on Subchapter 2 and Appendix Q at this time. The EPA plans to propose action on these provisions in a future rulemaking action.

The criteria used to evaluate these SIP revisions are found primarily in section 110 of the Act. Section 110(l) requires that a SIP revision submitted to the EPA be adopted after reasonable notice and public hearing and also requires that the EPA not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

These rules were promulgated in compliance with the Oklahoma Administrative Procedures Act and published in the *Oklahoma Register*, the official state publication for rulemaking actions.

II. The EPA's Evaluation

In this action, we are proposing to approve revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100-39). Submittal documents for Subchapter 39 are available in the docket for this action. ODEQ's May 7, 2020 submittal is amending the following sections:

1. 252:100-39-4 to remove an incorrect citation to a revoked state rule;
2. 252:100-39-16 to update the timeframe listed as the non-oxidant season, this revision is intended to ensure that the proper controls are used during scheduled refinery unit turnarounds during Oklahoma's current ozone season;
3. 252:100-39-40 to correct the dates of Oklahoma's non-oxidant season, this revision is intended to ensure that cutback asphalt cannot be used during Oklahoma's ozone season; and,
4. 252:100-39-41 to allow for the use of alternative testing methods for leak inspections, to update references used for pressure and vapor testing to incorporate the most recent EPA regulations, and to update tank truck tag (OAC 252:100-39-41(e)(4)(A)(iv) and (v)) requirements to reflect current practices in Tulsa County.

More information on the proposed changes is available in the Technical Support Document prepared in conjunction with this rulemaking action. This is a revision by revision discussion:

OAC 252:100, Subchapter 39, Section 4 revision removes an incorrect cross reference. The revision removes “252:100-48” from a list of rules from which facilities are exempted because 252:100-48 has been revoked. ODEQ provided notice of the proposed change, announced the comment period from December 3, 2018 through January 9, 2019 and posted a notice of public hearing in Volume 36, Number 6, page 44 of the Oklahoma Register on December 3, 2018. The public hearing was held on January 16, 2019, and no comments were received. The revision is ministerial in nature. Examination of the record indicates that the submitted revision to Subchapter 39, Section 4 is proper and provides additional clarity. Thus, we find that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 4.

OAC 252:100, Subchapter 39, Section 16 revisions update the non-oxidant season from November 1 through March 31 to December 1 through the last day of February. This update is consistent 40 CFR part 58, Appendix D, Table D-3 titled “Ozone Monitoring Season by State”. Scheduled refinery unit turnarounds may only be accomplished without the controls specified in OAC 252:100-39-16(b)(1) and OAC 252:100-39-16(b)(2) during non-oxidant seasons. ODEQ provided notice of the proposed change, announced the comment period from December 3, 2018 through January 9, 2019 and notice of a public hearing in Volume 36, Number 6, page 44 of the Oklahoma Register on December 3, 2018. The public hearing was held on January 16, 2019, and no comments were received. The environment will likely benefit from shortening the duration of non-oxidant season from 5 months to 3 months (changing from November 1 through March 31 to December 1 through the last day of February). Examination of the record indicates that the submitted revision to Subchapter 39, Section 16 is proper and the revisions will strengthen the SIP by requiring control of emissions during turnarounds during a time period consistent with the

ozone season in Oklahoma. Thus, we find that the Oklahoma SIP that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 16.

OAC 252:100, Subchapter 39, Section 40 revisions are to amend rules regulating the use of cutback asphalt to correct the dates of Oklahoma's non-oxidant season, which should be December 1 through the last day of February. This purpose of this proposed rule is to ensure that cutback asphalt cannot be used during Oklahoma's ozone season. This revision is consistent with 40 CFR part 58, Appendix D, Table D-3 titled "Ozone Monitoring Season by State". ODEQ provided notice of the proposed change, announced the comment period from September 4, 2018 through October 5, 2018, and notice of a public hearing in Volume 35, Number 24, page 705 of the Oklahoma Register on September 4, 2018. The public hearing was held on October 10, 2018, and no comments were received. The environment will benefit by restricting the time of year cutback asphalt can be used. Examination of the record indicates that the submitted revision to Subchapter 39, Section 40 is proper, the revisions will strengthen the SIP preventing emissions from the application of cutback asphalt during the time of year when ozone formation is most likely. Thus, we find that the Oklahoma SIP that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 40.

Several changes were made to OAC 252:100, Subchapter 39, Section 41. A typographical error was corrected in subsection 41(c)(5). In subsection 41(d)(3), reference was made to a test method in an EPA Control Technique Guideline (CTG) from 1978. This reference was changed to reference the EPA Test Method 27 contained in 40 CFR part 60 as the applicable procedure for the testing requirement for tank leak tightness. Several modifications were made to subsection 41(e). Subsection 41(e) applies to Tulsa County only. Subsections 41(e)(2)(B) and (E) were modified by removing a thirty-year-old effective date that is no longer necessary. Also, an alternative work practice for monitoring equipment for leaks that is consistent with 40 CFR

60.18(g) through 60.18(i) was added. The revision also states that leaks detected by EPA Test Method 21 or by an alternative work practice shall be repaired within 15 days. Revisions to subsection 41(e)(4)(A)(iv) update the reference to the portion of the rule that specifies the proper pressure testing which changed as a result of reorganizing the section. As part of reorganizing the section, subsection 41(e)(4)(A)(vi) was moved to subsection 41(e)(4)(B)(i), and other references in subsection 41(e)(4) were changed to align the references with the reorganization. Subsection 41(e)(4)(B)(ii) was updated to state that the vapor tightness test must be consistent with EPA Test Method 27 and updated what is considered a passing test as defined by EPA Test Method 27.

ODEQ provided notice of the proposed changes, announced the comment period from September 4, 2018 through October 5, 2018, and hearing schedule in Volume 35, Number 24, page 705 of the Oklahoma Register on September 4, 2018. The public hearing was held on October 10, 2018, and no comments were received. The revisions are ministerial in nature, update references consistent with federal regulations or adopt use of EPA Test Methods. Examination of the record indicates that the submitted revision to Subchapter 39, Section 41 is proper and do not relax the SIP. Thus, we find that the requirements of section 110(l) of the Act have been satisfied. Therefore, we are proposing to approve the submitted revision to Subchapter 39, Section 41.

III. Impact on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. Law 109-59, 109 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In

addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).¹

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all the State’s EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country. As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.² The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

¹ In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit’s decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA’s decision, described in this section, on October 1, 2020.

² EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 Fed. Reg. 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

As explained above, the EPA is proposing to approve revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100-39) Sections 4, 16, 40, and 41, which will apply in Tulsa and Oklahoma Counties. Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with EPA's October 1, 2020 SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within Tulsa and Oklahoma Counties, other than the excluded Indian country lands, as described above. Because – per the State's request under SAFETEA – EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.³

IV. Proposed Action

In this action, we are proposing to approve revisions to OAC 252:100-39, Emission of VOCs in Nonattainment Areas and Former Nonattainment Areas, in Section 4 (Exemptions), Section 16 (Petroleum refinery process unit turnaround), Section 40 (Cutback asphalt), and Section 41 (Storage, loading and transport/delivery of VOCs) as submitted to us by a letter dated May 20, 2020 (Submittal). The submittal covers Oklahoma's 2019 regulatory update. We are proposing to approve these revisions in accordance with section 110 of the Act.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are

³ In accordance with Executive Order 13990, EPA is currently reviewing our October 1, 2020 SAFETEA approval and is engaging in further consultation with tribal governments and discussions with the state of Oklahoma as part of this review. EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. (*Pawnee v. Regan*, No. 20-9635 (10th Cir.)). Pending completion of EPA's review, EPA is proceeding with this proposed action in accordance with the October 1, 2020 approval. EPA's final action on the approved revisions to the Oklahoma SIP that include revisions to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100-39) Sections 4, 16, 40, and 41 will address the scope of the state's program with respect to Indian country, and may make any appropriate adjustments, based on the status of our review at that time. If EPA's final action on Oklahoma's SIP is taken before our review of the SAFETEA approval is complete, EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the SAFETEA review.

proposing to incorporate by reference revisions to the Oklahoma regulations, as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposal to approve revisions to the Oklahoma SIP that include amendments to OAC Title 252 Chapter 100 Subchapter 39 (OAC 252:100-39) Sections 4, 16, 40, and 41 will apply, if finalized as proposed, to certain areas of Indian country in Tulsa and Oklahoma counties as discussed in the preamble, and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2021.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2021-15396 Filed: 7/21/2021 8:45 am; Publication Date: 7/22/2021]